

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Respondent,

v.

JAMES EDGAR COLEMAN,

Petitioner.

Civil No. 09-11676

Crim. No. 06-20483

Hon. Lawrence P. Zatkoff

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner, proceeding pro se, filed a motion to vacate sentence under 28 U.S.C. § 2255 [dkt 36]. The matter is currently before the Court on Magistrate Judge Majzoub's Report and Recommendation [dkt 50], in which the Magistrate Judge recommends that the motion be denied. After receiving an extension of time, Petitioner filed objections to the Report and Recommendation [dkt 55], and the Court reviews the objected-to portions of the Report and Recommendation de novo. The Court has thoroughly reviewed the court file, the Report and Recommendation, and Petitioner's objections. As a result of that review, the Court ADOPTS the Report and Recommendation and enters it as the findings and conclusions of this Court.

Also before the Court is Petitioner's motion to amend his motion to vacate sentence [dkt 53], in which Petitioner seeks to add three additional claims. The Court finds that Petitioner's motion is untimely, as it was not filed until after the Magistrate Judge issued her Report and Recommendation.

In addition, the Court has reviewed the proposed amendments and finds that two of the proposed additional counts consist of little more than restatements of Petitioner's prior claims. The

Report and Recommendation has thoroughly addressed such arguments. Further, to the extent that the Report and Recommendation did not address Petitioner's remaining claim that the Court did not adequately explain its sentence, the Court notes that Petitioner waived his right to appeal a within-Guidelines sentence as part of his Rule 11 Plea Agreement. *See* Plea Agreement at p.6 [dkt 20]. Petitioner's 365-month sentence, while at the high end, was within the agreed-to Guidelines range of 292-365 months, and Petitioner has therefore waived his right to appeal that sentence.

The Court finds that the proposed amendments are untimely and would otherwise be futile. Petitioner's motion to amend [dkt 53] is therefore DENIED.

Accordingly, IT IS HEREBY ORDERED that Petitioner's motion to vacate sentence [dkt 36] is DENIED and this action is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 10, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 10, 2010.

S/Marie E. Verlinde
Case Manager
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